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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0152-11
ONELL WOODEN,)	
Employee)	
)	Date of Issuance: March 27, 2014
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Onell Wooden, Employee, <i>Pro Se</i>		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 29, 2011, Onell Wooden (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) final decision to remove him from his position as an Educational Aide at Anacostia High School. Employee was removed because he received a “Minimally Effective” rating under Agency’s IMPACT program two years in a row.¹ Employee’s termination was effective on July 29, 2011.

This matter was assigned to me in April of 2013. On May 20, 2013, I issued an Order convening a prehearing conference to be held on June 13, 2013. Employee appeared for the conference; however, Agency did not. I subsequently issued an Order for Statement of Good Cause to Agency based on its failure to appear at the conference. Agency responded to the Order. Based on the Undersigned’s finding that Agency provided sufficient cause as a basis for its absence at the conference, I subsequently rescheduled the prehearing conference for August 19, 2013. During the conference, I determined that an evidentiary hearing was warranted based on the arguments presented by the parties. Therefore, an evidentiary hearing was held on November

¹ IMPACT is the effectiveness assessment system used by the D.C. Public School System to rate the performance of school-based personnel.

14, 2013. On December 10, 2013, I ordered the parties to submit written closing arguments on or before January 17, 2014. Both parties responded to the Order. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Whether Agency's removal of Employee should be upheld.

Agency's Position

Agency argues that Employee's termination under the IMPACT program was done in accordance with all District of Columbia statutes, regulations, and laws. Agency also argues that OEA's jurisdiction is limited with respect to the instant appeal and that Employee may only challenge whether the evaluation process and tools were properly administered. According to Agency, Employee was properly evaluated under the IMPACT program, which resulted in him receiving a final IMPACT score of "Minimally Effective" during the 2009-2010 and 2010-2011 school years.

Employee's Position

Employee contends that he was not properly evaluated during the 2010-2011 school year because he never received a post-evaluation conference for Cycle 3. In addition, Employee argues that he received unfair IMPACT scores because he was not assigned to a classroom during the 2010-2011 school year, and that he spent much of his time performing duties such as substitute teaching, data entry, and cafeteria duty. Employee believes that he was unfairly evaluated because he was not a part of actual classroom instruction.

SUMMARY OF RELEVANT TESTIMONY

The following represents what I have determined to be the most relevant facts adduced from the transcript generated as a result of the Evidentiary Hearing in the instant matter. Both Agency and Employee had the opportunity to present documentary and testimonial evidence during the course hearing to support their positions.

Thomas Flanagan (Tr. pgs. 10-100)

Thomas Flanagan ("Flanagan") is currently employed as the Deputy Chief of Programming in Agency's Office of Specialized Instruction. In 2008, Flanagan began working as the principal of Anacostia Senior High School. His primary duties were to ensure that the students were learning at a high level, and to ensure that the school was an environment that was conducive to learning. Flanagan was also responsible for supervising and evaluating paraprofessionals, special education coordinators, deans, instructional coaches, and counselors. A paraprofessional is a staff member, who has been allocated by the Office of Special Education

for the purpose of supporting students with disabilities. The paraprofessionals work under the direct supervision of a certified special education teacher. These staff members may be assigned to a single classroom or multiple classrooms throughout the course of the school day. In addition, paraprofessionals may be required to patrol the school hallways during class changes to ensure that students are moving to and from classes. According to Flanagan, the process for assigning a paraprofessional to a classroom first involves identifying where the school's biggest population of students with disabilities is. Flanagan testified that:

“[t]hey are generally assigned first to the self-contained cases because...we have a smaller student-to-teacher ratio in self-contained classes...we look at the co-taught classes, where you have a general education teacher and a special education teacher together teaching with a group of students who have disabilities and who don't have disabilities to support those classes...lastly, working with students who may be in a self-contained class for part of the day, then may go out to a general education class for part of the day.” (Tr. pg. 18).

Flanagan stated that he was familiar with the IMPACT process, and identified it as the system that he utilized during the 2009-2010 and 2010-2011 school years to evaluate his employees. Teachers were required to be evaluated a total of three times during the school year, and paraprofessionals were required to be evaluated two times. According to Flanagan, Agency provided training on the IMPACT process during 2009, 2010, and 2011. In addition, each staff member was given an IMPACT book to ensure that they understood the expectations of their position.

Flanagan identified Agency's Exhibits 9 and 10 as the IMPACT Guidebooks for Group 17 employees. Group 17 employees are educational aides and paraprofessionals. Specifically, Flanagan evaluated Employee using the Group 17 guidebook. Each evaluator uses a rubric to assess DCPS employees based on objective criteria. The employees are given the rubrics so that they are aware of how they will be evaluated. In this case, Employee was evaluated during the 2009-2010, and the 2010-2011 school years during Cycle 1 and Cycle 3. Flanagan stated that he evaluated Employee a total of four (4) times during this period.

IMPACT Evaluation, Cycle 1 (2009-2010)

When describing how the IMPACT scores are awarded, Flanagan testified that there are seven (7) Instructional Paraprofessional (“IP”) standards that assess: 1) job acumen; 2) rapport with students; 3) dependability; 4) adaptability; 5) customer service; 6) communication; and 7) collaboration. Each indicator was given a score of one (1) to four (4), with one being the lowest score an employee could receive. Employee received a score of three (3) in the area of job acumen because he had a solid command of basic skills and knowledge. Employee received a score of four (4) in the area of rapport with students because he was excellent at working with students who were behaviorally challenging. Flanagan stated that Employee received a score of two (2) for dependability because he had observed Employee sleeping in the classroom, and a student had the television on. Employee received a score of three (3) for adaptability and

customer service. Flanagan noted that Employee's written communication was clear, concise, and respectful, thus he received a score of three (3) in the area of communication. Lastly, Employee received a score of four (4) for the collaboration indicator. Flanagan stated that Employee went "above and beyond the support of the instructional program." Overall, Employee received an Average IP Score of 3.21.

The next standard Employee was evaluated on was Commitment to School Community ("CSC"); an element which evaluated how employees support and collaborate with their school community. Flanagan stated that he gave Employee a score of three (3) for CSC1 (Support of the Local School Initiatives). Employee received a score of three (3) for CSC2 (Support of the Special Education and English Language Learner Programs). He also received an average score of three (3) for CSC3 (Instructional Collaboration). Flanagan noted that Employee consistently participated in the Thirty Minute Morning Block, a time during which teachers and paraprofessionals hold collaborative team meetings, and planning sessions. Employee received an overall score of three (3) for the CSC standard.

Employee was also evaluated on the standard of Core Professionalism ("CP"), which is an assessment of overall professionalism, including: attendance, on-time arrival; respect, and the adherence to Agency's policies and procedures. An employee may be rated as "meets standard," "slightly below standard," or "significantly below standard." If an employee received "meets standards" in each CP element, then no points will be deducted from their score. Flanagan testified that Employee received an overall CP score of zero (0), which meant that he received a "meets standards" for all of the CP standards.

According to Flanagan, Employee had a conference to discuss his IMPACT score on November 25, 2009. During the conference, Flanagan discussed Employee's IMPACT scores in detail, highlighting his key strengths, key growth areas, and the next steps to be taken after the conference. Specifically, Employee was instructed to work with students and teachers to make sure that his role as a paraprofessional was clearly defined.

IMPACT Evaluation, Cycle 3 (2009-2010)

Employee received an average IP score of 1.57 for IMPACT Cycle 3. Specifically, Employee was awarded the following scores:

- 1) **Job Acumen**—2. Flanagan indicated that he began to observe some unprofessional behavior and difficulty with Employee.
- 2) **Rapport with Students**—1. Flanagan stated that he observed instances wherein Employee was disrespectful towards the students, and used inappropriate language out of frustration.
- 3) **Dependability**—2. According to Flanagan, Employee did not always adhere to the schedule he was given.
- 4) **Adaptability**—1. Employee was given this rating because some of the teachers felt that he was not benefiting the instruction of self-contained classes.
- 5) **Customer Service**—2. Flanagan reiterated that Employee had several negative interactions with teachers and students.

6) Communication—1.**7) Collaboration—2.**

Employee received an average CSC score of 2.33 during Cycle 3. Flanagan stated that he gave Employee a score of 2 for CSC1 (Support of the Local School Initiatives). Employee received a score of 3 for CSC2 (Support of the Special Education and English Language Learner Programs). He also received an average score of 2 for CSC3 (Instructional Collaboration). Flanagan testified that Employee helped with some of his assigned duties, but would sometimes be absent from his assigned post in the mornings when school was starting.

Employee's overall score for Core Professionalism during Cycle 3 was -20 (minus twenty). According to Flanagan, Employee received this score because he fell significantly below standard in each of the CP areas (attendance, on-time arrival, policies and procedures, and respect). Flanagan testified that he had a conference with Employee on June 10, 2010 to discuss his Cycle 3 scores. During the conference, Flanagan explained to Employee the importance of improving in some of the areas in which he received low scores.

IMPACT Evaluation Cycle 1 (2010-2011)

Flanagan testified that the evaluation rubric for the 2010-2011 school year differed from the previous year. A new standard under which Employee was evaluated changed to Educational Aide ("EA"). Employee received an average EA score of 2.25. Specifically, Employee was awarded the following scores:

- 1. Instructional Support—2.** Flanagan stated that Employee would sometimes support the classroom teachers in an effective manner, but did not work with individual groups of children on specific academic content.
- 2. School-wide Support—3.** Anacostia created a new schedule for the 2010-2011 school year. Flanagan stated that Employee supported the school during the process.
- 3. Positive Rapport with Students and Families—2.** According to Flanagan, Employee was somewhat inconsistent in his rapport with students.
- 4. Adaptability—2.** Flanagan reiterated that, while Employee was improving in his ability to work with challenging students, he would sometimes get into argumentative situations with other students.

Employee received an average CSC score of 2.67 during Cycle 1. Flanagan stated that he gave Employee a score of 3 for CSC1 (Support of the Local School Initiatives). Employee received a score of 3 for CSC2 (Support of the Special Education and English Language Learner Programs). He received a score of 2 for CSC3, which was amended in the 2010-2011 school year to the standard of High Expectations. Flanagan indicated that while Employee sometimes promoted high academic expectations, he needed to become more involved with student learning on a consistent basis. The IMPACT evaluation for the 2010-2011 school year also added 2 additional CSC components: Partnership with Families and Instructional Collaboration. Employee was not evaluated on these standards, as they were used to rate teachers, and not educational aides. Employee received "meets standards" in each area for Core Professionalism ("CP"); therefore, no points were deducted from his IMPACT score.

IMPACT Evaluation Cycle 3 (2010-2011)

Employee received an average EA score of 2.25. Employee was awarded the following scores:

1. **Instructional Support**—2. Flanagan stated that the school was still having issues finding a place for Employee to be successful in the classroom.
2. **School-wide Support**—2.
3. **Positive Rapport with Students and Families**—2. According to Flanagan, Employee was somewhat inconsistent in his communications with students and their families.
4. **Adaptability**—3. Flanagan noted that Employee was a team player during this time, and the he also escorted two students to the hospital during this cycle.

Employee received an average CSC score of 2.00 during Cycle 3. Flanagan stated that he gave Employee a score of 2 for CSC1 (Support of the Local School Initiatives). Employee received a score of 3 for CSC2 (Support of the Special Education and English Language Learner Programs). He received a score of 2 for CSC3. When asked about Employee's performance during this time, Flanagan reiterated that Employee sometimes promoted high expectations of the students, but was not consistent in this area. Employee received "meets standards" in each area for Core Professionalism ("CP"), therefore, no points were deducted from his IMPACT score. According to Flanagan, Employee had a conference to discuss his IMPACT score for Cycle 3 on June 14, 2011. During the conference, Flanagan discussed his desire to see Employee be a more consistent and reliable worker.

On cross examination, Flanagan stated that evaluations from Instructional Aides were not solely classroom-based and that he personally observed Employee in class during the third and fourth blocks in Ms. Robeson's class. When asked if he had ever witnessed Employee engaging in unprofessional behavior towards a student, Flanagan replied that he had observed Employee display unprofessional body language when speaking with students.

Kathryn McMahon-Klosterman (Tr. pgs. 101-129)

Kathryn McMahon-Klosterman ("Klosterman") works as the Director of IMPACT operations with DCPS. Prior to 2011, Klosterman previously served as the coordinator/manager of IMPACT operations. The IMPACT Operations Team is charged with overseeing the implementation of the IMPACT system, which includes managing the database, performing data analysis, processing appeals, and working with administrators to ensure that they are able to complete their obligations. The 2009-2010 school year was the first year in which employees were evaluated under the IMPACT program. According to Klosterman, the primary goals of the IMPACT program are to provide clear expectations to employees regarding how they will be evaluated on their work performance, to give feedback, and to make human capital decisions based on the data that has been gathered. In addition, all school-based employees are placed into a group which is designed to evaluate the specific roles and responsibilities of their position. Each group has a guidebook which outlines the evaluation criterion. The guidebooks are updated each year. Klosterman stated the following:

[E]mployees are placed in their IMPACT group, which then determines the components that will be a part of their evaluation...Based on their group and their responsibilities, there can be anywhere from 2-7 components...Those components each...have a rubric and particular standards...Those are scored...from a 1-4 scale, each standard, at multiple times throughout the year. Those are all then averaged together at the end to create the final scores, which are the individual component scores and multiply it by the weight they're given in the evaluation to create a raw score. And then that produces the final score.

Klosterman further testified that during the first year of IMPACT, Employee's position was evaluated under the Instructional Paraprofessional standards. During the second year, the name of the standard was changed to Educational Aide. An employee's final IMPACT score is released in the summer following the previous school year. The score is also available for employees to review online. After reviewing Employee's records, Klosterman concluded that Agency properly followed the IMPACT process when it evaluated Employee.

On cross examination, Klosertman stated that a paraprofessional/educational aide's responsibilities vary depending on the school that they are assigned to. Some of the key requirements of the position include adaptability and job acumen.

Onell Wooden (Tr. pgs. 129-140)

Onell Wooden ("Employee") provided the following testimony into the record regarding his employment, and subsequent termination during the evidentiary hearing. According to Employee, Agency gave him an IMPACT evaluation for the first time during the 2009/2010 school year. He worked inside a classroom with five (5) special education students. In November of 2009, Employee was placed with a reading-certified teacher who had no experience with emotionally disturbed students, which caused issues with the children's behavior. Employee testified that he did not have a conference with Flanagan after receiving a low IMPACT score to discuss his issues.

Employee stated that there was not a self-contained classroom for special needs students during the 2010-2011 school year. He stated that he spent the entire school year doing morning daily entry for students. He would then be assigned to perform other duties, such as In-School Suspension, substitute teaching, and accompanying students to the hospital when needed. Employee opined that he was unfairly evaluated during the 2010-2011 school year because he only spent approximately two to three hours in a classroom each week.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

D.C. Official Code § 1-617.18 grants DCPS the authority to create and implement its own tools for evaluating employees. IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during the 2009-2010 and 2010-2011 school years.

According to the documents of record, Agency conducts annual performance evaluation for all its employees. During the 2009-2010 school year, Agency utilized IMPACT as its evaluation system for all school-based employees. The IMPACT system was designed to provide specific feedback to employees to identify areas of strength, as well as areas in which improvement was needed.²

The IMPACT process required that all school-based staff receive written feedback regarding their evaluations, in addition to a having a post-evaluation conference with their evaluators. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01 a.m. the day after the end of each cycle. If an employee had any issues or concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS' IMPACT team by telephone or email. Employees also received an email indicating that their final scores were available online. Additionally, a hard copy of the report was mailed to the employees' address of record.

During the 2009-2010 and 2010-2011 school years, there were twenty (20) IMPACT grouping of DCPS employees. Employee's position, Instructional Paraprofessional/Educational Aide, was within Group 17. Under IMPACT, Employee was required to be evaluated two (2) times each year. The first assessment cycle ("Cycle 1") occurred between September 21st and December 1st; and the third assessment cycle ("Cycle 3"), occurred between March 1st and June 15th. Employee was assessed on the following IMPACT components:

- 1) Instructional Paraprofessional Standards—a measure of the employee's job acumen, positive rapport with students, dependability, adaptability, customer service, communication and collaboration. This component accounted for 90% of an Employee's IMPACT Score.
- 2) Commitment to the School Community—a measure of the extent to which school-based personnel support their colleagues and their school's local initiatives. This component accounted for 5% of the IMPACT score.
- 3) School-Value Added—a sophisticated statistical measure of a school's impact on student achievement, as measured by the DC CAST (District-wide assessment given in the spring of each year). This component accounted for 5% of the IMPACT score.
- 4) Core Professionalism—a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows: attendance; on-time arrival; compliance with policies and procedures; and respect. This component was scored differently from the others, as an employee could have additional points subtracted from their score if the rating was "slightly below standard" or "significantly below standard."

² Agency's Answer and Agency's Brief, *supra*.

School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year of either:

- 1) Ineffective = 100-174 points (immediate separation from school);
- 2) Minimally Effective = 175-249 points (given access to additional professional development);
- 3) Effective = 250-349 points; and
- 4) Highly Effective = 350-400 points.

If an employee received a “Minimally Effective” rating two (2) consecutive years in a row, then that employee was subject to termination under the IMPACT program.

In this case, I find that Agency followed the proper procedures in evaluating Employee under IMPACT. The documents of record, in addition to the testimonial evidence provided during the evidentiary hearing, support a finding that Employee was evaluated during Cycle 1 and Cycle 3 in the 2009-2010 and 2010-2011 school years. Moreover, Flanagan testified that during the 2009-2010 school year, he held post-evaluation conferences with Employee on November 25, 2009, and June 10, 2010, respectively. Flanagan also held post-evaluation conferences with Employee on November 29, 2010 and June 14, 2011 during the 2010-2011 school year. I find that Flanagan provided credible testimony regarding the discussions he had with Employee about his work performance. Although Employee argues that he was not afforded a post-evaluation conference for Cycle 3 of the 2010-2011 school year, the documents of record reflect that he had a conference with Flanagan after his evaluation. Based on the foregoing, I find that Agency followed the proper procedures in evaluating Employee under the IMPACT system.

Employee argues that he received unfair IMPACT scores because he was not officially assigned to a classroom during the 2010-2011 school year, and that many of his tasks were performed outside of the classroom. However, Employee does not argue that the evaluating principal’s comments were untrue; nor does he proffer any evidence that directly contradicts the principal’s factual findings. It should be noted that the D.C. Superior court in *Shaibu v. D.C. Public Schools*³ explained that substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. The court held that “it would not be enough for [Employee] to proffer to OEA evidence that did not conflict with the factual basis of the [Principal’s] evaluation but that would support a better overall evaluation.”⁴ The court further stated that if the factual basis of the “principal’s evaluation were true, the evaluation was supported by substantial evidence.” In addition, the Court in *Shaibu* held that “principals enjoy near total discretion in ranking their teachers”⁵ when implementing performance evaluations. The Court denied the employee’s petition, finding that the “factual statements were far more specific than [the employee’s] characterization suggests, and none of the evidence proffered to OEA by [the employee] directly controverted [the principal’s] specific factual bases for his evaluation of [the employee]....”

³ Case No. 2012 CA 003606 P (January 29, 2013).

⁴ *Id.* at 6.

⁵ *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

Employee has not proffered to this Office any credible evidence that controverts any of the principal's comments. Flanagan's testimony was consistent with the documents submitted by Agency pertinent to Employee's IMPACT scores. This Office has consistently held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.⁶ Because performance evaluations are "subjective and individualized in nature" and this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."⁷ Thus, I find that it was within the principal's discretion to rank and rate Employee's performance. Moreover, the undersigned Administrative Judge is not in the position to recommend that Employee receive a higher rating since the Undersigned is unfamiliar with the nature and details of Employee's position. Accordingly, I find that Flanagan evaluated Employee in a fairly and unbiased manner based on his personal observations of Employee's work performance. I also find that Flanagan did not abuse his discretion in evaluating Employee under IMPACT. Thus, I find no credible reason to disturb Employee's IMPACT scores.

In the instant matter, Employee was evaluated a total of four (4) times by the school principal during the 2009-2010 and 2010-2011 school years, in accordance with the IMPACT rules. After the scores were calculated, Employee received a final IMPACT score of 217 for the 2009-2010 school year, and a score of 223 for the 2010-2011 school year. Employee received a copy of his IMPACT score, in addition to having post-evaluation meetings with his evaluator. Because Employee received two consecutive final IMPACT scores of "Minimally Effective," Employee was terminated from his position. Based on the foregoing, I find that Agency properly adhered to the IMPACT process and had cause to terminate Employee. Accordingly, Agency's action must be upheld.

ORDER

It is hereby **ORDERED** that Agency's action of terminating Employee is **UPHELD**.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

⁶ See *Mavins v. District Department of Transportation*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013); *Mills v. District Department of Public Works*, OEA Matter No. 1601-0009-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774 (D.C. Cir. 1997); see also *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

⁷ See also *American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions). See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).